
UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF WEST VIRGINIA

M E M O R A N D U M

TO: Members of the Bankruptcy Bar for the Northern District of West Virginia

FROM: Ryan Johnson

DATE: February 24, 2010

RE: Resolutions of the 2010 Committee on Practice and Procedure for Chapter 13 Cases in the United States Bankruptcy Court for the Northern District of West Virginia

In January 2010, Judge Patrick M. Flatley solicited volunteers to serve on a committee to examine Chapter 13 practice in this District and to make recommendations for change. The committee's agenda, created from the suggestions of the bar, the clerk, and the court, included a wide range of topics. Initially, there were eight items on the agenda; another three were added during the Committee Meeting at the request of the Chapter 13 trustee. The Committee met on February 22, 2010, at 2:00 p.m. in Wheeling, West Virginia.

The individuals that participated in the February 22, 2010 committee meetings were:

1. Hon. Patrick M. Flatley
2. Anita Swaton
3. Ryan Johnson
3. Helen M. Morris & Staff
4. Susan Cannon-Ryan
5. George Hazlett
6. Roger Isla
7. Amanda Messler
8. Tom Fluharty
9. Mike Claggett
10. May Hayes & Staff
11. Steve Dragisich

Resolutions of Issues on the Agenda

1. Continuing confirmation hearings where there is a pending motion to dismiss the case.

Resolved: The Chapter 13 trustee is not willing to recommend confirmation without an adequate payment history to demonstrate feasibility and believes that it is a waste of the trustee's time to prepare a recommendation concerning confirmation when the trustee has also filed a motion to dismiss the case. Pending objections to confirmation, if any, will remain on the confirmation docket for hearing. If there are no pending objections to confirmation, then the trustee may file a motion to continue the confirmation hearing to a future docket and the court will adjudicate the pending motion to dismiss.

2. Notice of No Change to be filed in lieu of a recommendation regarding confirmation.¹

Resolved: In a situation where the trustee has filed a recommendation concerning confirmation in a case as part of a previous court docket, and where the items noted in the previous recommendation have not yet been satisfied, the trustee may file a Notice of No Change in the trustee's previously filed recommendation in lieu of submitting a new recommendation for the upcoming hearing.

3. Validity of an objection to a proposed plan when an amended plan is subsequently filed.

Resolved: This issue is being addressed by the Local Rules Committee. The proposed new local rule is N.D.W. Va. LBR 3015-2(d):

Once an amended Chapter 13 plan is filed by the debtor, all previously filed unconfirmed plans are deemed withdrawn. The filing of an amended plan does not remove any previously filed objection to confirmation; rather, the previously filed objection is deemed to be an objection to the amended plan, and removal of any previously filed objection must be done either by: (1) court order, (2) having the objecting party withdraw the objection, or (3) having the Chapter 13 trustee recommend confirmation and stating in the recommendation that the objection is mooted by the amended plan.

¹ This item was added to the agenda at the Committee Meeting at the request of the Chapter 13 trustee.

4. Amending the Model Plan to better enable the entry of two wage withholding orders in joint cases.

Resolved: To accommodate attorneys using Best Case to file their petitions, the court will amend the Model Chapter 13 Plan to better allow for the entry of two wage withholding orders in joint cases.

5. Adding non-debtor co-owners of property as parties to a lien strip-off action.

Resolved: The court made inquiry into practice and procedure when stripping off a second lien in a situation where a non-debtor co-owner is jointly liable on the note secured by the lien to strip off. Debtors' attorneys at the Meeting stated that they were already noticing the non-debtor co-owners (usually spouses) of the lien strip off action and that no change in local practice or procedure was necessary. The court adopted that recommendation.

6. Establishing a uniform method of requesting information from the Chapter 13 trustee and in getting a response.

Resolved: Debtors often call the Chapter 13 trustee's office asking questions of the Chapter 13 trustee's staff. Represented debtors are told by the trustee's staff to contact their attorney inasmuch as the trustee's staff is directed not to give legal advice. The trustee's staff will give information concerning routine matters, such as whether payment was or was not received. In the event an attorney wishes to communicate with the trustee, the best method to effect that communication is through email – not voice message, hard mail, or facsimile.

7. Including in either plans or the confirmation order some method of allowing debtors to obtain clear titles to vehicles when they have completed plan payments or satisfied the provisions of a confirmed plan relative to a secured lender secured by a motor vehicle.

Resolved: The court in the past has, and will continue to issue orders prepared by counsel that direct a secured creditor to release its lien on a vehicle's certificate of title once the debtor completes the plan and receives a discharge. No order should be submitted to the court before completion of the plan and discharge, however, inasmuch as 11 U.S.C. § 1325(a)(5) requires the secured creditor's lien to remain in place until the earlier of the payment of the underlying debt as determined by nonbankruptcy law, or discharge. Nothing will be added to the model plan with respect to this item on the agenda.

8. How payments are posted with the Chapter 13 trustee.

Resolved: The Chapter 13 trustee explained for the benefit of the Committee how payments are posted to her system. Once a case is filed, payment is due 30 days from the date of filing under 11 U.S.C. § 1326. The trustee sends a “Welcome Letter” to the debtor explaining where payments are to be sent. The bank scans and uploads all deposits to the Trustee’s office one business day after the receipt of the same. The trustee’s office posts the instruments to the debtor’s case, generally the day the upload is received, but the system dates the posting “as of” the date the bank received it. Thus, it is possible for a payment to show as posted on the same date a pleading may have been prepared that shows no such payment. There is a 14-day hold on all checks posted to the trustee’s system, so the “as of” posting method allows disbursement of funds sooner than if the instruments’ posted date were the date the trustee’s office posted the instrument. Bankruptcy Link is a free service that allows a party to see if the debtor made a monthly payment, but that service runs about one-week behind.

9. Continuing confirmation hearings when an amended plan is filed before the scheduled confirmation hearing and the notice period under Fed. R. Bankr. P. 2002(b) (28 days) cannot be satisfied before the hearing.²

Resolved: The Bankruptcy Clerk’s Office will automatically continue the confirmation hearing to the next scheduled confirmation hearing date without motion from either the debtor’s counsel or the trustee. The filing of the amended plan will not have any effect on a pending motion to dismiss the case, but objections to the previously filed plan will also be continued to the next scheduled confirmation hearing date.

10. Requesting the Chapter 13 trustee’s consent to a continuance of the confirmation hearing.³

Resolved: The Chapter 13 trustee does not have the authority to continue scheduled confirmation hearings. Almost all the time, the trustee has no objection to continuing a scheduled confirmation hearing at the request of debtor’s counsel. The best method of obtaining the trustee’s consent to a continuance is to send the trustee an email asking if she would consent; do not ask her if she will continue the hearing.

² This item was added to the agenda at the Committee Meeting at the request of the Chapter 13 trustee.

³ This item was added to the agenda at the Committee Meeting at the request of the Chapter 13 trustee.

11. **Having the courtroom clerk, chapter 13 trustee, or judge to announce at the beginning of the docket the cases that have been confirmed, continued, etc so that the affected parties in the courtroom may leave.**

Resolved: The court will endeavor to post a copy of the hearing docket for the Clarksburg point of holding court in a conspicuous place outside of the courtroom so that parties may be apprised of cases that were set for hearing, but which were subsequently settled or continued.